

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 226

Introduced by Assembly Member Atkins

**(Coauthors: Assembly Members Chávez, Jones, Maienschein,
Waldron, and Weber)**

(Coauthors: Senators Anderson, Bates, Block, and Hueso)

February 3, 2015

An act to amend Sections 113779, 113789, 113839, 113984, and 114266 of, to add Sections 113729.5, 113780, and 113794.3 to, and to add Chapter 12.7 (commencing with Section 114378) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 226, as amended, Atkins. Retail food safety: fishermen's markets.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities and various types of food. Among other things, the code requires nonpermanent food facilities that handle nonprepackaged food to protect the food from contamination and limit the display and handling of nonprepackaged food. The code also establishes specified food safety and sanitation requirements for certified farmers' markets governing food preparation, storage, and sampling, among other things. Under existing law, local health agencies are primarily responsible for enforcing the code. A

person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

This bill would create a new type of nonpermanent food facility, defined as a “fishermen’s market,” that would be a food facility operated by a licensed commercial fisherman or an entity representing ~~California seafood producers~~, *two or more California-licensed commercial fishermen or California-licensed commercial fishermen and California-registered aquaculturists*, that sells only *raw* edible aquatic plants, raw fresh fish, or fresh frozen fish, ~~legally~~ caught by California-licensed commercial fishermen or harvested by California-registered aquaculturists, directly to consumers. The bill would establish and impose food safety and sanitation requirements upon a fishermen’s market. The bill would authorize only a licensed commercial fisherman or an entity representing ~~California seafood producers~~ *two or more California-licensed commercial fishermen or California-licensed commercial fishermen and California-registered aquaculturists* to act as the responsible person and sole permitholder for a fishermen’s market, and would require that fisherman or entity to submit a permit application and site plan, including specified information, to the enforcement agency at least 2 weeks prior to the operation of the fishermen’s market. The bill would define terms for its purposes and make conforming changes.

By imposing new enforcement requirements on local health agencies, and by creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 113729.5 is added to the Health and Safety Code, to read:

113729.5. “Acceptable market name” means a name that the FDA recognizes as a suitable statement of identity, as described in Section 101.3 of Title 21 of the Code of Federal Regulations, in the labeling of a species. An acceptable market name fairly represents the identity of the species to United States consumers because it is not confusingly similar to the name of another species and because it is not otherwise misleading. An acceptable market name may be any of the following:

(a) A common or usual name established by either a history of common usage in the United States or by regulation.

(b) The common name.

(c) A name specifically coined as the market name for a species. For example, “basa” is the market name coined for *Pangasius bocourti*.

SEC. 2. Section 113779 of the Health and Safety Code is amended to read:

113779. (a) “Fish” means fresh or saltwater finfish, crustaceans, and other forms of aquatic life, other than birds or mammals, and all molluscan shellfish, if intended for human consumption. “Fish” also includes alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin, and the roe of these animals.

(b) “Fish” includes a product derived in whole or in part from fish, including fish that have been processed in any manner.

SEC. 3. Section 113780 is added to the Health and Safety Code, to read:

113780. “Fishermen’s market” means a location that is operated by a commercial fisherman licensed by the Department of Fish and Wildlife or an entity representing ~~California seafood producers,~~ *two or more California-licensed commercial fishermen or California-licensed commercial fishermen and California-registered aquaculturists*, that sells only raw edible aquatic plants, raw fresh fish, or fresh frozen fish, caught by commercial fishermen licensed by the Department of Fish and Wildlife or harvested by California-registered aquaculturists, directly to consumers.

SEC. 4. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) A place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (13) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(11) Fishermen’s markets.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no

1 monetary benefit, other than that resulting from recognition from
2 participating in an event.

3 (5) Premises set aside for wine tasting, as that term is used in
4 Section 23356.1 of the Business and Professions Code and in the
5 regulations adopted pursuant to that section, that comply with
6 Section 118375, regardless of whether there is a charge for the
7 wine tasting, if no other beverage, except for bottles of wine and
8 prepackaged nonpotentially hazardous beverages, is offered for
9 sale for onsite consumption and no food, except for crackers, is
10 served.

11 (6) Premises operated by a producer, selling or offering for sale
12 only whole produce grown by the producer or shell eggs, or both,
13 provided the sales are conducted on premises controlled by the
14 producer.

15 (7) A commercial food processing establishment as defined in
16 Section 111955.

17 (8) A child day care facility, as defined in Section 1596.750.

18 (9) A community care facility, as defined in Section 1502.

19 (10) A residential care facility for the elderly, as defined in
20 Section 1569.2.

21 (11) A residential care facility for the chronically ill, which has
22 the same meaning as a residential care facility, as defined in Section
23 1568.01.

24 (12) Premises set aside by a beer manufacturer, as defined in
25 Section 25000.2 of the Business and Professions Code, that comply
26 with Section 118375, for the purposes of beer tasting, regardless
27 of whether there is a charge for the beer tasting, if no other
28 beverage, except for beer and prepackaged nonpotentially
29 hazardous beverages, is offered for sale for onsite consumption,
30 and no food, except for crackers, pretzels, or prepackaged food
31 that is not potentially hazardous food is offered for onsite
32 consumption.

33 (13) (A) An intermediate care facility for the developmentally
34 disabled, as defined in subdivisions (e), (h), and (m) of Section
35 1250, with a capacity of six beds or fewer.

36 (B) A facility described in subparagraph (A) shall report any
37 foodborne illness or outbreak to the local health department and
38 to the State Department of Public Health within 24 hours of the
39 illness or outbreak.

40 (14) A community food producer, as defined in Section 113752.

1 SEC. 5. Section 113794.3 is added to the Health and Safety
2 Code, to read:

3 113794.3. “Fresh frozen” means that the food was quickly
4 frozen while still fresh, including immediately after the food had
5 been harvested or fish had been caught.

6 SEC. 6. Section 113839 of the Health and Safety Code is
7 amended to read:

8 113839. “Nonpermanent food facility” means a food facility
9 that operates from a mobile unit or at a nonpermanent location,
10 including, but not limited to, a certified farmers’ market, a
11 fishermen’s market, a mobile food facility, a mobile support unit,
12 a temporary food facility, or a vending machine.

13 SEC. 7. Section 113984 of the Health and Safety Code is
14 amended to read:

15 113984. (a) Adequate and suitable counter space shall be
16 provided for all food preparation operations.

17 (b) Except as specified in subdivision (c), food preparation shall
18 be conducted within a fully enclosed food facility.

19 (c) Limited food preparation shall be conducted within a food
20 compartment or as approved by the enforcement agency. Subject
21 to subdivision (g), this subdivision does not require an additional
22 food compartment when adding ingredients to a beverage or
23 dispensing into a serving container when the beverage is prepared
24 for immediate service in response to an individual consumer order.

25 (d) Food shall be prepared with suitable utensils and on surfaces
26 that, prior to use, have been cleaned, rinsed, and sanitized as
27 specified in Section 114117 to prevent cross-contamination.

28 (e) Overhead protection shall be provided above all food
29 preparation, food display, warewashing, and food storage areas.

30 (f) All food shall be thawed, washed, sliced, and cooled within
31 an approved fully enclosed food facility.

32 (g) Based upon local environmental conditions, location, and
33 other similar factors, the enforcement officer may establish
34 additional structural or operational requirements, or both, for
35 mobile food facilities as necessary to ensure that foods,
36 food-contact surfaces, and utensils are of a safe and sanitary
37 quality.

38 SEC. 8. Section 114266 of the Health and Safety Code is
39 amended to read:

1 114266. (a) Each permanent food facility shall be fully
2 enclosed in a building consisting of permanent floors, walls, and
3 an overhead structure that meet the minimum standards as
4 prescribed by this part. Food facilities that are not fully enclosed
5 on all sides and that are in operation on January 1, 1985, shall not
6 be required to meet the requirements of this section until the facility
7 is remodeled or has a significant menu change or significant change
8 in its method of operation.

9 (b) Notwithstanding subdivision (a), this section does not require
10 the enclosure of dining areas or any other operation approved for
11 outdoor food service.

12 (c) Notwithstanding subdivision (a), a produce stand that was
13 in operation prior to January 1, 2007, shall have no more than one
14 side open to the outside air during business hours.

15 SEC. 9. Chapter 12.7 (commencing with Section 114378) is
16 added to Part 7 of Division 104 of the Health and Safety Code, to
17 read:

18
19 CHAPTER 12.7. FISHERMEN'S MARKETS
20

21 114378. A fishermen's market shall meet the applicable
22 requirements of Chapter 1 (commencing with Section 113700),
23 Chapter 2 (commencing with Section 113728), Chapter 3
24 (commencing with Section 113945), Chapter 4 (commencing with
25 Section 113980), Chapter 5 (commencing with Section 114095),
26 Chapter 6 (commencing with Section 114130), Chapter 7
27 (commencing with Section 114189), Chapter 8 (commencing with
28 Section 114250), and Chapter 13 (commencing with Section
29 114380), unless exempted as provided in this chapter.

30 114378.1. (a) Fish sold in a fishermen's market shall be raw
31 and may be displayed whole or eviscerated. A fisherman selling
32 fish in a fishermen's market shall only sell raw edible aquatic
33 plants or fish that he or she caught legally, or that was caught by
34 one or two other licensed commercial fishermen. If a fisherman
35 sells fish caught by another licensed commercial fisherman, the
36 fisherman shall provide a copy of that other fisherman's
37 commercial license and contact information upon the request of
38 the enforcement agency.

39 (b) A fishermen's market may provide a separate service that
40 fillets, cuts, or packages fish for customers who purchase direct

1 sales of fish within the fishermen's market as a temporary food
2 facility, mobile food facility, or other facility approved by the
3 enforcement agency. A separate health permit is required and
4 applicable requirements for that category of permit shall be met.

5 (c) Fish parts from the day's operations may be used for bait
6 by a licensed commercial fisherman or registered aquaculturist.

7 (d) Ice used for refrigeration purposes shall not be used for
8 consumption in food or beverages.

9 (e) Notwithstanding subdivision (b) and Section 113818, raw
10 fish may be eviscerated at a fishermen's market.

11 114378.2. A fishermen's market shall meet all of the following
12 requirements:

13 (a) Each fishermen's market food booth shall post the name of
14 the fisherman, vessel or farm, and acceptable market name of fish
15 sold so they are legible and clearly visible to patrons.

16 (b) Notwithstanding Section 113953, handwashing facilities for
17 a fishermen's market food both that operates for three consecutive
18 days or less may include a container capable of providing a
19 continuous stream of water from an approved source that leaves
20 both hands free to allow vigorous rubbing with soap and warm
21 water for 10 to 15 seconds, inclusive. A catch basin shall be
22 provided to collect wastewater, and the wastewater shall be
23 properly disposed of according to Section 114197.

24 (c) Handwashing facilities shall be equipped with handwashing
25 cleanser and single-use sanitary towels. A separate receptacle shall
26 be available for towel waste.

27 (d) Notwithstanding Section 114205, potable water shall be
28 available for handwashing and sanitizing as approved by the
29 enforcement agency.

30 (e) Approved toilet and handwashing facilities shall be available
31 within 200 feet of the premises of a fishermen's market or as
32 approved by the enforcement agency.

33 (f) All garbage and refuse shall be stored and disposed of in a
34 manner approved by the enforcement agency.

35 (g) Wastewater shall be disposed of in a facility connected to
36 the public sewer system or in a manner approved by the
37 enforcement agency.

38 (h) Floors shall be constructed of concrete, asphalt, tight wood,
39 or other similar cleanable material kept in good repair.

1 (i) Overhead protection shall be provided over the evisceration
2 process, food storage, food display, and warewashing areas.
3 Overhead protection shall be made of wood, canvas, or other
4 materials that protect the facility from precipitation, dust, bird and
5 insect droppings, and other contaminants.

6 (j) Notwithstanding Section 114095, approved warewashing
7 facilities may be shared if the sink is centrally located and is
8 adjacent to the sharing facilities. The enforcement agency may
9 also approve use of warewashing facilities within a permanent
10 facility if it is located within 200 feet of the premises of the
11 fishermen's market or as approved by the enforcement agency.

12 (k) Food-related and utensil-related equipment shall be located
13 and installed to prevent food contamination.

14 (l) During periods of inoperation, food, food equipment, and
15 utensils shall be stored within a fully enclosed facility approved
16 by the enforcement agency, or in approved food compartments
17 where the food, food equipment, and utensils are protected at all
18 times from contamination, exposure to the elements, ingress of
19 rodents or other vermin, and temperature abuse.

20 114378.3. (a) A permit application and site plan shall be
21 submitted to the enforcement agency at least two weeks prior to
22 the operation of a fishermen's market. Only California-licensed
23 commercial fishermen or an entity representing ~~California seafood~~
24 ~~producers~~ *two or more California-licensed commercial fishermen*
25 *or California-licensed commercial fishermen and*
26 *California-registered aquaculturists* may act as the responsible
27 person and sole permitholder for a fishermen's market. The site
28 plan shall include all of the following:

29 (1) A map with proposed locations of the fishermen's market
30 food booths, boundaries of the fishermen's market, restrooms,
31 refuse containers, potable water supply faucets, wastewater disposal
32 facilities, and all shared warewashing and ~~hand washing~~
33 *handwashing* facilities as applicable.

34 (2) Details of the materials and methods used to construct the
35 food booths.

36 (3) Foods that will be handled and dispensed.

37 (4) Procedures for food handling, food temperature control,
38 refuse management, cleaning and sanitizing utensils and equipment,
39 and cleaning structures and premises.

1 (5) Procedures for transporting food to and from the fishermen's
2 market and actions taken to prevent contamination.

3 (6) List of names of licensed commercial fishermen or registered
4 aquaculturists, copies of their licenses or registrations, and a
5 document authorizing the organizer to act as the responsible person
6 and ~~permit holder~~ *permitholder* on their behalf.

7 (b) A fishermen's market may operate adjacent to, or in
8 conjunction with, a food facility or a community event. In those
9 situations, the fishermen's market is only subject to the limitations
10 and requirements of a fishermen's market. The other food facilities
11 remain subject to the limitations and requirements, including
12 separate permit requirements, that are applicable to the type of
13 facility being operated.

14 SEC. 10. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution for certain
16 costs that may be incurred by a local agency or school district
17 because, in that regard, this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty for a crime
19 or infraction, within the meaning of Section 17556 of the
20 Government Code, or changes the definition of a crime within the
21 meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 However, if the Commission on State Mandates determines that
24 this act contains other costs mandated by the state, reimbursement
25 to local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.